

In the Matter of)
)
Rates for Interstate Inmate Calling Services) WC Docket No. 12-375
)

only have there been substantial and profoundly procompetitive changes in the ICS marketplace since 2003 — including a dramatic decrease in average per-call prices across most jurisdictional classifications of ICS traffic — but the divergence between intrastate and interstate ICS rate levels has increased significantly in just the past several years. This transformation continues to reshape the industry and has serious consequences for regulators, both the FCC and state public service commissions (“PSCs”).

There are a variety of factors driving change in the inmate services industry. As a relatively new and disruptive entrant in the market, Telmate does not have the nearly two decades of experience and service record of which its more established, legacy competitors can boast (or, as some might characterize, are saddled). Instead, Telmate represents the application of new technologies and new thinking to an industry that to many observers has too often offered the appearance of resisting change. Telmate’s pioneering and innovative services, such as virtual, IP-powered visitations and remotely reloadable prepaid and debit-cards, are industry game-changers that meet pressing and underserved needs of both correctional institutions and inmate families. Yet precisely because it is a comparatively recent participant, Telmate does not possess the reams of pricing, rating, call distribution and collect call acceptance data that larger firms like Securus Technologies and Global Tel*Link have undoubtedly amassed.

Where possible, these comments corroborate Telmate’s observations with citation to or submission of empirical data. We nonetheless recognize that Telmate’s experience is somewhat unique because the company’s calling platforms are more modern and efficient, and its debt-service and capital costs are far lower, than other industry participants. Regardless of the age, technical infrastructure or capitalization of different providers, however, all firms in the ICS

industry share a common interest in earning a fair return on their and their shareholders' investment.

In light of statutory and RFP-based limits on local, intraLATA toll and interLATA intrastate ICS calls — which along with commission levels vary widely by state and jurisdiction — the brunt of upwards cost pressure has been borne in recent years by interstate inmate calls, as the NPRM notes.⁵ Yet interstate traffic is a small percentage of ICS calling. Telmate's solution to this dilemma has been a "postalized" rate structure, using the same per-minute charge for all ICS calls regardless of their distance, rating or jurisdictional classification. In combination with debit and prepaid services that, unlike collect calls, do not as a cost-of-service matter need to support expensive billing & collection functions, this allows Telmate's correctional institution customers to offer lower-cost calls for most of their inmates and inmate families while simultaneously *increasing* both call volumes *and* total commission revenues received by the applicable governmental entity.

Given the hodge-podge of price caps, commission levels (some mandated by state law) and prevailing local rates characteristic of today's ICS industry, it is difficult to contemplate fashioning a single regulatory scheme applicable consistently nationwide. That is an especially hard task for this Commission, because interstate ICS prices have for years, and increasingly so today, in effect cross-subsidized local ICS rates held below cost by state, county and municipal corrections officials. Moreover, as Telmate itself has sometimes experienced, financial commission payments are but a small portion of the services, equipment and benefits — such as free "booking" calls, live deposit acceptance, automated inmate grievance and other IVR

⁵ NPRM ¶ 8 ("interstate [ICS] calls are often the most expensive").

systems, among others⁶ — required by correctional systems from their ICS partners. Indeed, free calls alone comprise a hefty 21% of all call minutes and 30% of calls from county correctional facilities.

Regardless of the FCC’s power under Section 276 to regulate, or preempt state PSC regulation of, intrastate inmate rates, the ICS market therefore presents a contradictory set of circumstances. There is a growing tension between the funding, revenue and communications policies of state and local corrections departments, on the one hand, and the Commission’s laudable objective of reforming a market that in some respects has an inefficient, built-in incentive to utilize high prices and significant non-usage sensitive rate elements, on the other. This situation is a classic illustration of why the FCC faces such a policy challenge in this proceeding. Without careful calibration, a federal cap to interstate inmate rates, while reasonable on a stand-alone basis, could in fact kill the business by making it financially unprofitable overall, for both traditional and new providers. Likewise, states and their political subdivisions face a budgeting crisis that only emphasizes the role played by ICS commission revenues in offsetting the high costs of correctional facility operations, particularly for inmate welfare and rehabilitation, and the untoward risk of triggering state and local tax increases to finance prisons and jails. Either of these are results all interested parties should equally reject and which Telmate is confident the FCC will strive to avoid.

DISCUSSION

The *Notice* lays out a comprehensive array of subjects relevant to analysis of the ICS market and consideration of alternative rate reform measures. Telmate’s initial comments focus on a core set of these issues, in particular the shifting mix of call types in inmate services and the

⁶ These include video visitation systems, booking cash kiosks and lobby prepaid deposit kiosks. *See* Section V *infra*.

effect of that development on interstate ICS rates. We also discuss an approach — uniform “postalized” per-minute rates across jurisdictional call classifications — not addressed in the Commission’s *NPRM*.

I. A SINGLE-PROVIDER MODEL FOR INMATE SERVICES IS STILL REQUIRED FOR SECURITY REASONS

It appears that the Commission at present is not contemplating the relief originally proposed by the *Wright* petitioners of prohibiting exclusive telecommunications contracts at correctional institutions. The *First Wright Petition* asked that the FCC “bar exclusive dealing arrangements” for inmate services and proposed a new network architecture in which one ICS platform provider would serve each facility and would be required to permit requesting inter-exchange carriers (“IXCs”) to interconnect in exchange for an access charge. *First Wright Petition* at 15. The current *Notice*, in contrast, inquires about the impact of exclusive contracts on ICS rates (*NPRM* ¶ 36), but does not propose to overrule the single-provider model adopted by all states and the federal corrections system.

That conclusion is consistent both with present market facts and with the FCC’s prior analysis. Despite technological changes in the ICS industry, it remains true that in the prison and jail setting, carriers face “exceptional circumstances”⁷ in meeting the special security needs of corrections departments. These have been discussed in depth for many years and need not be repeated. No one currently disputes, as the Commission concluded in 1998, that “[i]t has generally been the practice of prison authorities at both the federal and state levels, including state political subdivisions, to grant an outbound calling monopoly to a single IXC serving the

⁷ *Policies and Rules Concerning Operator Service Providers*, Report and Order, 6 FCC Rcd. 2744, 2752 ¶ 15 (1991) (holding that statutory requirements for unblocking of payphone “dial-around” calls do not apply to inmate phones), *aff’d*, *Amendment of Policies and Rules Concerning Operator Service Providers and Call Aggregators*, 10 FCC Rcd. 1533, 1534-35 (1995).

particular prison” due to “the special security requirements applicable to inmate calls.”⁸ *See NPRM* ¶ 6 (“[s]ecurity considerations also differentiate ICS from public payphone services”).

Commissioner Pai observed that choice and competition “are not hallmarks of life behind bars. Inmates cannot choose among multiple carriers for lower rates.”⁹ Yet it also remains true that rates for ICS services are subject to upward pressure from exogenous causes — site commissions paid by the winning bidder — and that competition for these commissions decreases incentives for cost-reduction and technological innovation.¹⁰ It is this imbalance, in other words the fact that while corrections officials select the ICS providers “their incentives do not necessarily align with those who are incarcerated,” that has distorted the effects of competition and innovation in the ICS industry.¹¹

Telmate cautions, however, that there are significant legal and practical constraints to a federal effort to preempt state and local ICS commissions practices. The *Notice* is correct that at the state level, some jurisdictions have abolished site commissions for correctional facilities. *NPRM* ¶ 38 & n.123. While the FCC may have the legal authority to outlaw or limit commission arrangements for prison payphones under its plenary Section 276 power, much as it deregulated local coin rates in 1997, Telmate disagrees with the proposal by one of the industry’s largest firms that the FCC should “invoke this authority” to impose a federal prohibition of ICS commissions with “uniform nationwide application.”¹²

⁸ *BPP Second Report* ¶ 46.

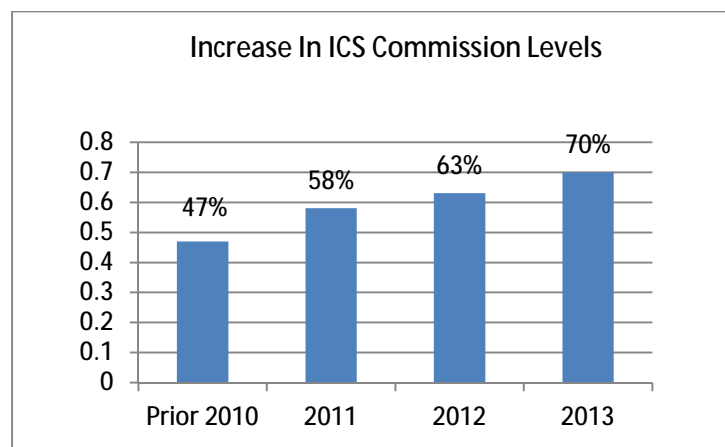
⁹ Pai Statement at 1.

¹⁰ *E.g.*, Initial Comments of T-NETIX Inc., CC Docket No. 96-128, at 7 (May 24, 2002) (“T-NETIX 2002 Comments”).

¹¹ Pai Statement at 1.

¹² T-NETIX 2002 Comments at 5.

The role of state and local governments in criminal punishment and corrections administration is a quintessential aspect of sovereignty, one for which legislative and political recourse is available to curtail perceived abuses. Telmate respectfully suggests it would embroil the FCC in an unnecessarily adversarial confrontation with state regulators and corrections departments, one presenting unsettled constitutional implications under the 10th and 11th Amendments, if this Commission interfered with that sovereignty based on the congressional delegation of “payphone compensation” discretion embodied in Section 276.¹³ Furthermore, even if permissible, in practical terms the wide divergence in site commission levels among states makes fashioning a limit or cap on commissions unworkable. Current commissions payable to county and municipal-level corrections departments by the winning ICS bidders range from 67% in Osceola, Florida, to 71% in Cobb county, Georgia, 81% in Fulton county, Georgia and 86% in San Diego, California. *NPRM* ¶ 37. Commission levels have also been increasing significantly over time, as summarized by the chart below.¹⁴ In this context, a one-size-fits-all approach to inmate service commissions is neither practical nor advisable.



¹³ “Since site commission fees paid by inmate telephone service providers to prisons may be used to cover the costs of inmate security, as we move forward we must ensure that our efforts to reduce interstate rates do not compromise prison safety.” Statement of Commissioner Rosenworcel (“Rosenworcel Statement”) at 1.

¹⁴ See Section V *infra* for additional discussion of ICS commission trends.

II. THE MIX OF CALL TYPES IN THE ICS SETTING, AND THE EXPLOSIVE GROWTH OF NON-GEOGRAPHIC NUMBERS, IS PUTTING UPWARD PRESSURE ON INTERSTATE INMATE RATES WHILE RADICALLY LOWERING AVERAGE CALL PRICES

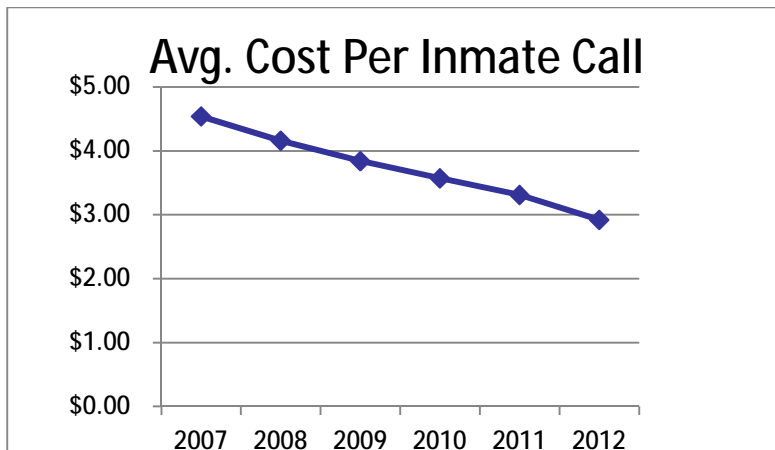
As Commissioner Rosenworcel observed, the record this proceeding has generated so far reveals that inmate rates “vary tremendously” based on the state law involved, the type of prison facility and the specific contract for services.¹⁵ Rates also vary considerably based on call type and jurisdictional classification, however. One of the principal reasons for such divergence is that state PSC and legislative rate caps apply to intrastate but not interstate ICS rates. Another reason, one obliquely averted to in the *Notice*, is that the growth of non-geographic numbers (via wireless phones and VoIP services, including Skype and Google Voice) has dramatically affected the mix of calling patterns from correctional facilities. *NPRM* ¶ 41.

The Commission correctly notes that inmate call recipients “are obtaining telephone numbers, from wireless or VoIP providers, that are local to the prison to take advantage of lower local calling rates.” *Id.* This trend is entirely consistent with Telmate’s experience. Local numbers from prepaid wireless and VoIP services can be set up in minutes, often without charge, and allow inmates or called parties to pay local rates for calls that would otherwise be classified jurisdictionally as intraLATA toll or intrastate interLATA, which are typically priced higher than local rates. In one Northwestern state, for instance, Telmate found that between 2007 and Q1 2012, local calling had grown sharply from 38% of inmate calls (corresponding to 43% of minutes and 17% of revenue) to 70% of calls (corresponding to 76% of minutes and 47% of revenues).

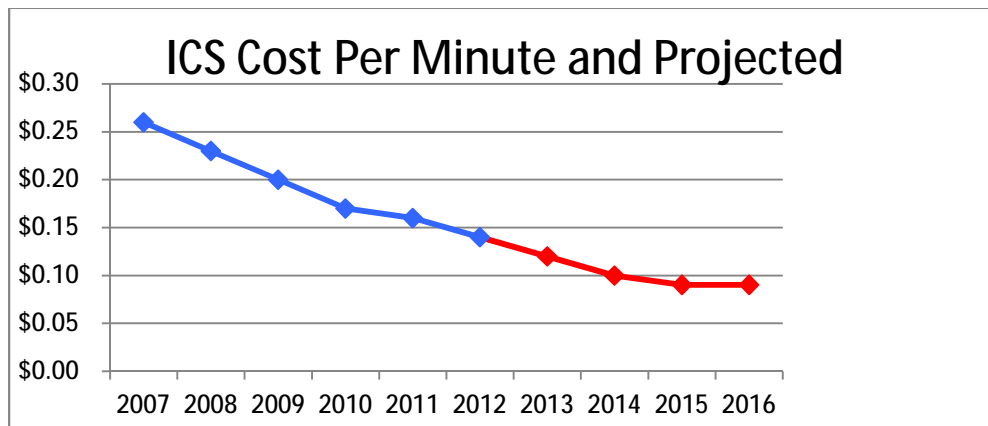
The effect of this dramatic shift is evident in total call prices and revenues realized by ICS providers. Average costs per call in the ICS market have fallen significantly with the

¹⁵ Rosenworcel Statement at 1.

substitution of local rates for toll and interstate rates. *NPRM* ¶ 29. Telmate estimates the reduction has been from an average of more than \$4.50 in 2007 to just under approximately \$3.00 in 2012. (The company's own call prices as of 2012 averaged \$2.30 per call across all facilities and \$3.50 per call for county facilities.)¹⁶ As a corollary, the changing call type mix has reduced average per-minute costs to inmates and the parties they call, despite the



fact that per-minute ICS rates largely have not decreased. Telmate projects that, absent regulatory or other intervention, this trend will continue, as illustrated in the following chart.



While beneficial for consumers, the impact of this trend on ICS providers and corrections facilities, on the other hand, is negative. Overall revenues have fallen as local prices have

¹⁶ Telmate's current average connect and per-minutes rates by state and by inmate population are set out in Exhibit A to these comments.

replaced toll and interstate prices for a majority of ICS traffic. Commission payments to state and local corrections departments have likewise fallen sharply, notwithstanding a roughly 25% increase in daily prison populations over the same time period. The result is that it is *interstate* ICS rates that have, over the past five years, seen the largest increases. In the current environment, unregulated interstate ICS rates are subsidizing local rates as a vehicle by which providers attempt to defray the impact of jurisdictional arbitrage via non-geographic numbers.

This scenario has mixed implications for the FCC's options as to interstate ICS rate reform. On the one hand, consumer substitution of local rates for a majority of inmate calls reduces the actual prices inmates and their families in fact pay for ICS services. On the other hand, given the relatively large capital expenses associated with ICS technologies, inmate service providers need to recover those costs in order to earn a reasonable return on investment, which means their interstate prices are bearing the weight of artificially increased local usage at rates subject to state and RFP-based rate caps. Interstate ICS prices have for years, and increasingly so today, in effect cross-subsidized local ICS rates held below cost by state, county and municipal corrections officials. Without careful calibration, a federal cap on interstate inmate rates, while reasonable on a stand-alone basis, could in fact kill the business by making it financially unprofitable overall, for both traditional and new providers.

If assessed without regard to the dramatically changed mix of call traffic in the ICS market, FCC action on interstate rates could therefore have the opposite effect desired by the Commission and the *Wright* petitioners by making the ICS business unprofitable and driving firms from the market. A blunt regulatory response, in other words, could kill the goose and prevent achievement of the very rehabilitative objectives the *Notice* contemplates from reductions in ICS prices and corresponding increases in inmate calling. *NPRM* ¶¶ 3-4.

III. DEBIT AND PREPAID ICS CALLING ARE TECHNOLOGICALLY FEASIBLE OPTIONS FOR CONSIDERATION

The *Notice* inquires whether a mandate for debit and prepaid calling is justifiable and technically feasible. *NPRM* ¶¶ 31, 33. With regard to feasibility, the answer depends on the age and corresponding technological capabilities of the ICS platform involved. Legacy incumbents in the inmate services market often maintain profit margins by installing or retrofitting older systems developed a decade or longer ago. While it may have been true in 2004 that some providers faced “administrative burdens” and would require “significant equipment upgrades” to implement debit card calling in the ICS setting,¹⁷ that is not true for state-of-the art systems today. All of Telmate’s platforms support debit and prepaid services, at scale, without any difference in the level of security options and safeguards available to corrections officials.¹⁸

There are no technical limitations to implementing non-collect calling systems in the correctional institution setting. This reality undermines any remaining validity to the old rationale, which in the past was but today is no longer correct, that ICS calling must be limited to a collect-only basis in order to meet the security requirements inherent in the prison and jail setting. *NPRM* ¶ 36. Moreover, some of the largest components of operational expenses involved in the provision of inmate services are (a) billing & collection, and (b) uncollectibles or bad debt. Debit and prepaid services eliminate billing & collection costs entirely, cutting as

¹⁷ T-NETIX Comments, CC Docket No. 96-128, at 32 (March 10, 2004).

¹⁸ Telmate’s IP-based technology also allows inmate families and friends to safely and easily deposit funds into an inmate’s commissary account, or reload debit and prepaid cards, using a major credit card through a secure website. Together with hundreds of retail kiosks located in residential areas where inmate families reside, *see* <http://www.telmate.com/friends-and-family/find-a-kiosk/>, often far from prison locations (*see* Clyburn Statement at 1), this is an example of the innovation Telmate has already brought to the ICS industry. By facilitating easier payment transactions for the inmates’ friends and family, Telmate provides more ways to pay for calls, which in turn means more deposits and more revenue for correctional facilities.

much as \$3.00 per billing “record” from the cost of service.¹⁹ These alternatives also all but eliminate bad debt also (bounced checks, etc., remain a risk). Accordingly, debit and prepaid ICS services can be offered with lower per-call setup charges than possible as a business matter with collect services.²⁰

IV. LOWER ICS PRICES INCREASE INMATE CALLING VOLUME AND COMMISSION REVENUES FOR CORRECTIONAL FACILITIES

The *Notice* asks about the relationship between ICS rates and call volume. *NPRM* ¶ 27. Telmate’s experience proves the often-cited economic truism that lower prices stimulate demand. Indeed, Telmate has been able to reverse the trend of falling provider and commission revenues at some of its correctional facility customer locations by *lowering* rates and *increasing* call volumes. When there are lower rates — so long as they are still reasonable rates — volume goes up and everyone wins. The facility receives higher commissions, the provider realizes higher revenues, the callers pay less, and the number and duration of inmate calls goes up, which reduces convict recidivism.

One way to achieve this result is by application of “postalized” ICS rates. Telmate pioneered this pricing model for ICS services, under which all calls are charged at the same per-minute rate regardless of distance, call type or jurisdictional classification. It is not an approach consistent with current state regulation or correctional RFP requirements in every instance, as a

¹⁹ Collect calls are very expensive to bill. These costs have varying degrees of complexity and inconsistency throughout the marketplace. The components include bill rendering fees and per-record fees which vary by LEC. Some are as high as \$2.15 per bill, with per-record fees as high as 16% of the billed amount. In addition, ICS providers have to absorb a large amount of bad debt passed back to from their LEC billing agents. This adds an additional cost burden on the ICS provider. The average net collected revenue, after bad debt and fees, is only about 50-60% of the amount charged on a LEC bill. ICS providers also typically bill credit and debit cards. These costs likewise vary, with providers again charged fees for transactions and for bad debt.

²⁰ Whether to impose a rate structure requirement that bans any per-call setup charges for ICS services (*NPRM* ¶ 18) is a complex economic issue. There are plainly fixed costs involved in the provision of inmate services that do not vary with usage. Much like the FCC’s access charge scheme, under which some fixed costs are recovered by a fixed charge to users (the SLC), it is not unreasonable as a regulatory matter to permit the use of fixed per-call charges for ICS services.

number of jurisdictions continue to require different rate structures for different call types. Yet where permissible, postalized rates represent a superior solution for all parties involved. In one instance, more calls were completed from a state correctional system in its first six months with a Telmate postalized rate than any annualized call volume dating back five years. As another consequence of this new rate structure, “local” calls fell from 63% of total minutes to 23% of total minutes, because inmates and their families no longer had a rate-based incentive to arbitrage by substituting local for toll and interstate calls. In yet another instance, a Great Plains state, Telmate’s postalized rate of \$0.12/minute resulted in an immediate increase in inmate call volume by an average of 233% across all facilities.

From the record compiled in the Commission’s various ICS dockets, it appears that providers like Securus and the other firms joining in the 2008 ICS Provider Cost Study largely continue to assess different per-minute rates by call type, although mileage bands seem to have been eliminated.²¹ Some of these providers have issued large amounts of debt securities and are subject to substantial debt-service obligations, along with higher capital expenses, than the more efficient providers like Telmate. Such considerations are vital to competition and business management, but are not relevant to a Commission decision on ICS rate reform. The telecommunications sector is no longer a public utility in which rates to consumers can or should be based on the costs specific to individual firms. Regulation of ICS rates, if appropriate, therefore may not permissibly sanction variations in allowed rates based on the cost structures of any particular firm or firms in the market.

Lowered rates are of course not the only way to increase call volume by inmates. Simple improvements in service options and customer service — such as Telmate’s network of retail

²¹ *E.g.*, Securus May 23, 2008 *ex parte*, CC Docket No. 98-126, at Exh. A.

kiosks and secure website for prepaid and debit transactions²² — can stimulate as much as a 40% increase in inmate calls. These initiatives represent product differentiation in a form that benefits both correctional facility customers and their inmate populations. We perceive no obvious regulatory implications, but encourage the FCC, as the *Notice* indicates, to assess the question of ICS rate reform with an eye to current business and marketplace realities.

V. SITE COMMISSIONS REPRESENT A LEGITIMATE COST OF DOING BUSINESS FOR ICS PROVIDERS AND ARE NOT LIMITED TO FINANCIAL PAYMENTS IN TODAY’S MARKETPLACE

The *Notice* inquires about the magnitude of ICS commissions and suggests that such payments may represent provider profit rather than a legitimate “cost of payphone[]” service. *NPRM* ¶¶ 37-38. There are several factors relevant to the FCC’s analysis of ICS commissions and commission levels.

First, minimum commission levels are set by the correctional facilities and departments issuing RFPs for competitive bidding. Such mandatory payments have been increasing in recent years,²³ with representative examples illustrated in the chart below.

ICS Commission Increases	Old	New
A Montana county	45.00% Aug-08	67.70% Mar-11
An Oregon county	55.00% Dec-08	65.00% Jan-13
A Washington county	55.00% Jan-07	60.00% Jan-13

Second, it belies economics and business reality to characterize commission payments as anything other than a cost of providing ICS service. Unless a corrections system (such as the Federal Bureau of Prisons and states like New Mexico and New York) abolishes site commis-

²² See note 18 above.

²³ The record before the FCC suggests that ICS commission levels have also risen significantly over the past decade. In the 1997-2002 timeframe, “[s]ite commissions paid to facilities ... averaged 33%.” T-NETIX 2002 Comments, Cabe Decl. ¶ 5.

sions, any communications company bidding to serve its facilities must agree to pay at least the minimum percentage of revenues demanded. The FCC has recognized this reality in the past.²⁴ Commissions are set at a fixed proportion of the carrier's gross revenues and thus are a straight revenue transfer from inmates and called parties to the corrections system. They literally "come off the top" and in almost all cases (a small subset of commissions are payable on net revenues) are never part of an ICS provider's gross margin, net margin or profits.

Third, and most importantly, commissions are no longer confined merely to a portion of the carrier's revenues.²⁵ As noted in the Introduction, corrections facilities require a wide range of equipment and services from successful RFP bidders today. These include free "booking" calls, live deposit acceptance, automated inmate grievance and other IVR systems, voice biometrics, commissary ordering, managed cell phone access, storage of recorded inmate calls, and in some instances computing equipment for corrections staff as well as law libraries or religious services. The volume of such non-financial consideration has likewise been increasing, especially for mandatory free calls, which represent a rapidly growing and substantial proportion of ICS traffic. It would belie reality and basic business accounting for the FCC to pretend

		Avg. All Facilities	Avg. County	Avg. Fed. & State
% of total	Free Calls	18%	31%	7%
% of total	Free Minutes	12%	21%	5%
Per Minute	Collect Call	\$0.51	\$0.65	\$0.16
Per Call	Collect Call	\$5.28	\$6.18	\$2.08
Per Minute	Prepaid Call	\$0.20	\$0.28	\$0.15
Per Call	Prepaid Call	\$2.05	\$3.04	\$1.39
	Collect Calls % (of paid)	8%	13%	3%

²⁴ *NPRM* ¶ 5 and n.6, *First Inmate Rate NPRM* ¶ 10 ("[t]o have a realistic chance of winning a contract, the bidder must include an amount to cover commissions paid to the inmate facility").

²⁵ "Site commissions are assessed in a number of forms: as a percentage of net or gross revenue, as an initial 'signing bonus,' or as an in-kind contribution of equipment or other tangible goods unrelated to the provisioning of telecommunications services." 2002 T-NETIX Comments at 3.

that commission payments and non-financial commission mandates like free calls and IVR grievance systems either do not exist or are not in fact a cost of service borne by the ICS providers.

There is a final point about commissions the FCC should, in today's fiscal environment, take into serious consideration. With the United States economy remaining mired as of 2013 in the longest and steepest recession since World War II, all levels of government are struggling to balance their budgets. Many have adopted austerity regimes; several have filed for bankruptcy protection. The taxation consequences of federal action to disallow or preempt the assessment of commissions by state, county and local corrections officials are obvious, as the revenues displaced would undoubtedly come from higher tax assessments on the general citizenry. The FCC would therefore be well-advised in this context to carefully assess whether, as an institutional matter in our system of federalism, a decision to overrule state and local collection of ICS commissions should be made by Congress rather than an independent administrative agency.

VI. THE FCC SHOULD COUPLE ANY RATE REFORM WITH A “FRESH LOOK” WINDOW IN LIGHT OF THE PREDOMINANCE OF LONG-TERM CONTRACTS IN THE ICS INDUSTRY

ICS providers to state and local correctional systems benefit not only from exclusive concessions, but also from long-term contracts that can last up to a decade. Effective implementation of any new regulatory approach for inmate services therefore requires that providers and facility customers have the legal option to walk away from current contractual arrangements.

The *Notice* asks whether the FCC has the legal power to order such a “fresh look” window. *NPRM* ¶ 46. Given the history of this Commission's payphone regulations, that does not seem open to question. This Commission ordered the unblocking of public payphone “dial

around” calls premised on its general Title II authority even before passage of TOCSIA²⁶ corroborated those rules by statute, legally preempting contractual provisions that required all traffic to be routed by the payphone owner to a single operator services provider.

Such a fresh look approach is imperative in today’s inmate services industry if the FCC hopes to have any serious short-term impact on the ICS market and the prices actually paid by inmates, families and other called parties.²⁷ If a new regulatory structure were only to apply after expiration of existing contracts, rate reform would be delayed considerably. Furthermore, some options, such as mandatory debit or prepaid services, cannot be offered by every ICS provider, especially the industry’s larger firms that characteristically install older platform technologies in smaller correctional locations. Should the FCC decide that pricing and/or service decisions by corrections officers in the RFP setting are inconsistent with the Communications Act and federal policy, those government officials merit the opportunity to consider different services, providers and rate structures. As noted above, the diminishing proportion of interstate calls — along with the business necessity to reflect in interstate rates the cost-covering revenue requirement arising from state rate caps and the changing mix of ICS traffic — means that Commission action confined just to interstate ICS services equally demands a “fresh look” window.

²⁶ Telephone Operator Consumer Services Improvement Act of 1990, 47 U.S.C. § 226.

²⁷ Some regulatory options are no longer viable given changed circumstances. Gateway in 1995 proposed “that the Commission place a ‘cap’ on inmate service provider rates at AT&T’s current daytime inmate rates.” *See, e.g.,* Gateway Reply Comments, CC Docket No. 96-128, at 2 (July 15, 1999). That would no longer work today because (a) along with other major LECs, inmate services are no longer offered by AT&T, which sold its ICS assets to Global Tel*Link in 2006, and (b) neither state PSCs nor the FCC generally rely on “dominant” carrier rates for regulatory purposes in an environment of multiple facilities based and resale local carriers. A rate cap based on operator-assisted collect rates suffers from equal but different infirmities, namely overstating the cost of ICS services based on a collect-only rationale that, as discussed above, no longer retains validity.

CONCLUSION

The FCC faces significant data collection and analytical challenges in fashioning a new regulatory regime for inmate services and in considering reform of ICS rates. A dramatic decrease in average per-call prices across most jurisdictional classifications of ICS traffic, as well as increasing divergence between intrastate and interstate ICS rate levels and rapidly rising site commission levels, are relatively new facts in the inmate services market that should be taken into account in the Commission's decision.

Respectfully submitted,

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Exhibit A

Average Telmate Connect Rate and Per-Minute Rate by State								
	Local		IntraLATA		InterLATA		Interstate	
	Connect	Per Min	Connect	Per Min	Connect	Per Min	Connect	Per Min
Alabama	\$2.51	\$ -	\$2.12	\$0.23	\$2.12	\$0.29	\$3.05	\$0.48
Arizona	\$2.73	\$ -	\$ 2.48	\$0.08	\$2.73	\$0.08	\$3.20	\$0.57
California	\$3.33	\$0.03	\$3.75	\$0.16	\$3.75	\$0.16	\$3.28	\$0.49
Colorado	\$2.75	\$0.01	\$ 2.25	\$0.26	\$2.75	\$0.26	\$3.75	\$0.26
Florida	\$2.25	\$ -	\$1.85	\$0.50	\$1.85	\$0.50	\$2.85	\$0.50
Georgia	\$2.03	\$0.03	\$2.00	\$0.19	\$2.00	\$0.19	\$2.49	\$0.50
Idaho	\$2.57	\$0.05	\$3.13	\$0.07	\$3.99	\$0.09	\$5.67	\$0.08
Indiana	\$3.13	\$ -	\$2.34	\$0.31	\$1.85	\$0.28	\$2.38	\$0.53
Kentucky	\$2.56	\$ -	\$1.60	\$0.22	\$1.60	\$0.27	\$4.24	\$0.41
Montana	\$0.53	\$0.14	\$0.68	\$0.12	\$1.51	\$0.09	\$0.97	\$0.16
Nebraska	\$2.17	\$0.02	\$2.63	\$0.18	\$3.13	\$0.18	\$3.17	\$0.20
Nevada	\$2.25	\$0.06					\$2.27	\$0.40
Oklahoma	\$2.63	\$0.02	\$4.00	\$ -	\$5.00	\$ -	\$4.63	\$0.13
Oregon	\$0.89	\$0.11	\$0.79	\$0.19	\$1.02	\$0.25	\$1.70	\$0.26
South Carolina	\$0.70	\$0.06	\$2.00	\$0.20	\$2.50	\$0.40	\$2.95	\$0.49
Utah	\$2.83	\$ -	\$2.92	\$0.08	\$3.33	\$0.22	\$4.17	\$0.33
Washington	\$3.01	\$0.01	\$3.58	\$0.04	\$4.69	\$0.16	\$5.79	\$ 0.17
Wisconsin	\$3.00	\$ -	\$6.00	\$ -	\$8.00	\$ -	\$10.00	\$ -
Wyoming	\$2.25	\$0.13	\$2.88	\$0.13	\$3.63	\$0.13	\$4.63	\$0.13
Average Telmate Connect Rate and Per-Minute Rate by Inmate Population								
	Local		IntraLATA		InterLATA		Interstate	
	Connect	Per Min	Connect	Per Min	Connect	Per Min	Connect	Per Min
1 -99	\$2.69	\$0.02	\$2.78	\$0.16	\$3.33	\$0.19	\$4.64	\$0.29
100-199	\$2.46	\$0.03	\$2.42	\$0.16	\$2.78	\$0.21	\$3.78	\$0.33
200 - 299	\$2.70	\$0.02	\$2.44	\$0.19	\$2.60	\$0.31	\$ 3.30	\$0.41
300-399	\$2.10	\$0.06	\$1.69	\$0.25	\$1.69	\$0.28	\$3.71	\$0.42
400-499	\$2.08	\$0.03	\$2.27	\$0.14	\$2.73	\$ 0.21	\$3.39	\$0.34
500-599	\$2.32	\$ -	\$1.77	\$0.33	\$1.77	\$0.34	\$3.95	\$0.33
600-699	\$3.00	\$ -	\$6.00	\$ -	\$8.00	\$ -	\$10.00	\$ -
700-799	\$2.00	\$ -	\$3.50	\$ -	\$7.50	\$ -	\$7.50	\$ -
800 - 899	\$2.75	\$ -	\$3.58	\$0.07	\$3.92	\$0.10	\$6.44	\$0.13
1,000-1,499	\$2.73	\$ -	\$2.38	\$0.15	\$2.00	\$0.13	\$3.62	\$0.25
1,800-1,899	\$0.30	\$0.15	\$0.30	\$0.15	\$ -	\$ -	\$0.30	\$0.15
2,500-2,599	\$2.25	\$0.04	\$ -	\$ -	\$ -	\$ -	\$2.25	\$0.25
14,000-14,500	\$ -	\$0.16	\$ -	\$0.16	\$ -	\$0.16	\$ -	\$0.16